

VZCZCXRO9073  
OO RUEHROV  
DE RUEHTV #0184/01 0270947  
ZNY CCCCC ZZH  
O 270947Z JAN 10  
FM AMEMBASSY TEL AVIV  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 5171  
INFO RUEHKK/ARAB ISRAELI COLLECTIVE PRIORITY  
RUEHAM/AMEMBASSY AMMAN PRIORITY 7188  
RUEHEG/AMEMBASSY CAIRO PRIORITY 5305  
RUEHJM/AMCONSUL JERUSALEM PRIORITY 3609  
RUEHGV/USMISSION GENEVA PRIORITY 0666  
RHEHNSC/NSC WASHDC PRIORITY  
RUCNDT/USMISSION USUN NEW YORK PRIORITY 9712

C O N F I D E N T I A L SECTION 01 OF 04 TEL AVIV 000184

SIPDIS

E.O. 12958: DECL: 01/26/2020  
TAGS: [PREL](#) [PHUM](#) [KWBG](#) [PTER](#) [IS](#)  
SUBJECT: A/S POSNER DISCUSSES GOLDSTONE REPORT WITH ISRAELI  
NGOS, ICRC, AND LEGAL EXPERTS

REF: A. A) TEL AVIV 183  
[1](#)B. B) TEL AVIV 182  
[1](#)C. C) 09 TEL AVIV 02831  
[1](#)D. D) 09 TEL AVIV 02342  
[1](#)E. E) 09 TEL AVIV 2283

Classified By: Charge d'Affaires Luis G. Moreno for reasons 1.4 (b) and (d).

[1](#)1. (C) Summary. On the margins of his meetings with Israeli military commanders and officials (reftels A and B), DRL A/S Michael Posner also met with several non-governmental interlocutors regarding the Israeli response to the Goldstone Report. Most advocated that the GOI do more to address the report directly and publicly, with the human rights NGOs calling for extensive investigations resulting in criminal prosecutions, while the ICRC, academic, and legal experts welcomed ongoing IDF investigations but called for more forward-looking GOI policy and doctrinal changes. End summary.

[1](#)2. (C) DRL Assistant Secretary Michael Posner discussed the Israeli response to the UN Goldstone Report with human rights organizations, the International Committee of the Red Cross (ICRC), UNRWA, the UN Secretariat's Office for the Coordination of Humanitarian Affairs (OCHA), and legal and academic experts on the margins of his official meetings with the GOI and IDF during the week of January 5-9. All agreed on the need for an independent commission to review the credibility of IDF investigations, which have not yet become public. Several interlocutors said the government's focus should be primarily on identifying lessons learned from Operation Cast Lead and ways to improve military doctrine and wartime humanitarian coordination. The human rights NGO representatives, however, called primarily for accountability at the highest levels in the IDF and political leadership, arguing that internal IDF investigations alone could not address the main issues enflaming international opinion from Israel's Operation Cast Lead in the Gaza Strip last year.

[1](#)3. (C) Limor Yehuda of the Association for Civil Rights in Israel (ACRI) argued that military police investigations could not resolve the main issues of how Israel conducted the military operation, including its targeting and policy decisions. While she rejected Goldstone's tone and claim that Israel deliberately targeted civilians during the hostilities, she believed only international pressure could influence the GOI to create an independent investigation that could hold senior leadership accountable for alleged violations of International Humanitarian Law (IHL) during the armed conflict. Yehuda stressed that her requests to the Attorney General to open an independent investigation were solely based on IHL principles of distinction and proportionality and did not make the Goldstone Report's mistake of confusing IHL with Human Rights Law, as IHL is the

relevant body of law that applies in situations of armed conflict. Yehuda was also disappointed that there was still no Israeli public discussion of lifting the "blockade" on Gaza, which she described as being a purely punitive measure since Hamas' 2007 takeover.

14. (C) Human rights NGO B'tselem director Jessica Montell, who had submitted 20 cases regarding Operation Cast Lead to the Attorney General that resulted in 8-9 military investigations, also said B'tselem would like to see changes at senior levels of the GOI that could never be achieved by an internal IDF investigation. She wanted the highest level decision-makers held accountable for the decisions they made on how to prosecute the conflict, including Military Advocate General (MAG) Mandelblit for his role in advising on the suitability of targeting typically civilian structures, such as the Hamas police force, which suffered heavy losses during the first hour of hostilities. She recognized the difficulty of pursuing a criminal track as she believed all levels of the IDF and GOI were involved and the public remained highly supportive of the operation, but she at least wanted to see prohibitions on the types of weapons used in urban environments, such as white phosphorus and mortar shells. She also sought greater clarity on proportionality, as there appeared to be "no moral check on war" when Israel allegedly dehumanized those in Gaza and "had zero tolerance for IDF killed," which she claimed transferred risk onto civilians in Gaza. Her aim, she said, was to make Israel weigh world opinion and consider whether it could "afford another operation like this."

TEL AVIV 00000184 002 OF 004

Red Cross Awaiting Official Reply  
-----

15. (C) A/S Posner met January 6 with ICRC Israel delegation head Pierre Wettach, deputy Pierre Dorbes, and Legal Advisor Cordula Droege. ICRC had submitted its own confidential "Conduct of Hostilities" report in June 2009 to the GoI. The report, Wettach said, addressed legal issues, operational issues and possible IHL violations that occurred during Operation Cast Lead. ICRC hopes to engage the IDF on legal and operational policy issues related to these incidents, such as proportionality, weapons use, and the distinction of combatants from non-combatants. According to Wettach, there were fundamental disagreements between the IDF and the ICRC regarding distinction: for the IDF, for example, Hamas police were a legitimate target at all times; for the ICRC, a policeman who was not engaged in hostilities against Israel was not a combatant. Another disagreement was the targeting of civilian infrastructure. For the IDF, according to Droege, open agricultural land might be a legitimate target because at some point in the future it could be used for firing rockets at Israel; for the ICRC, this was a highly problematic assumption.

16. (C) The ICRC had yet to receive an official written response to its report, but it did have initial discussions with the IDF, which promised serious investigations and expanded cooperation with the ICRC. Wettach hoped that the GoI would engage with ICRC once it had completed its response to the Goldstone report. Wettach relayed, however, that while they understood the GoI's constraints, ICRC Geneva was becoming impatient with the lack of an official reply.  
(reftel C)

17. (C) Wettach described the ICRC's interest not in ascribing blame for Israeli actions during Cast Lead, but to move forward, improve field coordination, increase IHL education and training, and further integrate IHL norms into Israeli military doctrine and standard operating procedures. The ICRC wanted to see fewer civilians killed and wounded in any future conflict, which they judged would be in the not too distant future, and to have the wounded reach hospitals more quickly. Wettach said the Israeli response had been

positive. The IDF had acknowledged that its coordination with the ICRC during Cast Lead could have been better. In fact, during the operation, ICRC had no contact with the IDF's Southern Command, but only with the Coordinator of Government Activities in the Territories (COGAT), a less than ideal arrangement. A better mechanism was also needed for operational issues such as transfer of wounded and care for the sick during hostilities.

18. (C) Another ICRC concern was that for the IDF, "force protection" meant a "zero casualty" policy. Wettach commented that the GOI position as articulated by the MFA was that force protection was a legitimate excuse for all actions by Israel. Wettach observed, however, that "dropping leaflets is fine, but it doesn't mean that once it's done, you can shoot at anything that moves." The ICRC representatives believed a key issue would be the chain of command at the tactical level, since the IDF tendency was to give as much latitude as far down the chain of command as possible. (Note: On the day of this meeting, the decision by IDF Chief of Staff Gabi Ashkenazi to move IDF legal advisors down the chain of command to the division level was widely reported in the Israeli press. End note.) Wettach added that there had been two incidents during Cast Lead in which ICRC vehicles were fired on by the IDF, which should never have happened. Though the IDF fire did not cause any casualties, it led to the suspension of ICRC movement in Gaza for two days.

United Nations  
-----

19. (C) A/S Posner separately met January 8 with OCHA Head of Office Phillipe Lazzarini and UNRWA Deputy Commissioner General Filippo Grandi. Both described contact with the GOI as regular and mostly positive. However, they attributed the failure of UN advocacy efforts related to Gaza and West Bank access restrictions and protection of civilians to their low, technical-level contact with the GOI. Grandi noted that, when he arrived at his post four years ago, he was surprised with "the UN's low level of engagement" with the GOI. "Our interlocutors are simply unable to deliver," said UNRWA Legal

TEL AVIV 00000184 003 OF 004

Advisor Anna Segall. When asked about coordination during the Gaza conflict, both Lazzarini and Grandi said that creation of the Humanitarian Coordination Cell had been a positive step. However, the cell had been unable to coordinate, or respond to, on-the-ground, real-time events inside Gaza. For example, when Israeli artillery began firing inside the UNRWA compound in Gaza on January 15, it took several hours of back-and-forth communication with the cell to stop the shelling. (Comment: In fact, Embassy Tel Aviv and ConGen Jerusalem, working together, played a key role in stopping the shelling. End comment.) Both OCHA and UNRWA recommended that any future coordination mechanism include direct contact with the operational command structure. Lazzarini also noted the need to pre-position adequate humanitarian supplies prior to the onset of another conflict. Prior to Cast Lead, UNRWA's and WFP's food stocks had dwindled to almost nothing due to greater-than-usual access restrictions in November and early December 2009, he said.

Perspective of Possible Head of Commission of Inquiry  
-----

110. (C) A/S Posner and his delegation met January 6 with retired Supreme Court Chief Justice Aharon Barak, who along with the prior Supreme Court Chief Justice Meir Shamgar was often mentioned as one of the two likeliest persons to head up an independent Israeli investigatory committee on Operation Cast Lead, should one be established. Barak said that he had deliberately not read the Goldstone report nor expressed views on it. He noted that he and Goldstone were close friends, and that he had been responsible for

introducing Goldstone,s daughter, who had lived in Israel, to her husband, but added that he had not been in touch with Goldstone recently. Barak had been a member of the Kahan Commission which investigated the 1982 Sabra and Shatila massacre.

¶11. (C) Barak said that, from a legal perspective, Israel could choose either to do nothing at all in response to the Goldstone Report, or to create a Commission of Inquiry. A third option existed as well, based on a special statute which would allow the cabinet to appoint a commission to investigate a topic of its choosing. The terms of such an appointment could range from "check the Goldstone report" to "see if Goldstone was right about individual cases," or "check if the IDF investigated properly and reached the correct conclusions." It would be up to the cabinet to dictate the terms of reference. The decision to establish a full Commission of Inquiry would be taken by the executive branch, which would determine the number of its members (typically three to five). It would be up to the Chief Justice of the Supreme Court to decide who would sit on the commission. If convened, the commission would have all the authorities of a court to call hearings, have witnesses represented by lawyers, etc. A typical inquiry would begin with a criminal investigation (which would be difficult given the time that has elapsed since Operation Cast Lead) and be followed by court hearings. Acknowledging that he might be named head of such a commission if one is established, he noted that "If I don,t agree to the terms of reference, they,ll find someone else who will."

¶12. (C) On the Goldstone report itself, Barak commented that the idea that "there was a conspiracy to kill Arabs" made no sense. He believed that the report was unfair, but observed that there had been no organized public defense by the Israeli government. Barak said he was surprised that Goldstone was "running around giving interviews and comments on his report," and contrasted Goldstone,s actions to his own as a member of the Kahan Commission: "we published the report, and that was it. We didn,t say anything about it."

¶13. (C) Members of the delegation noted that they were trying to get a sense of whether the GoI might want to establish a commission and under what terms. Barak said that he did not know, and had not been following the debate. He added that he had not responded to anyone about the possibility of his heading up a Commission of Inquiry, but implied that his interest in doing so would largely depend on what the commission,s terms of reference would be. He also noted that "this Commission of Inquiry shouldn,t just study facts, but provide a normative framework for the future."

Raising Academic Discourse on Asymmetrical Warfare

TEL AVIV 00000184 004 OF 004

-----  
¶14. (C) Hebrew University Professor Moshe Halbertal, who also teaches ethics for the IDF and whose New Republic article contributed one of the few nuanced discussions of Goldstone, told the delegation there was much room for academics to raise the level of discourse over Goldstone to a constructive examination of the difficulties of asymmetrical warfare and expressed personal interest in being involved in that debate.

¶15. (U) A/S Posner,s delegation cleared this cable.  
Moreno